

LATHAM & WATKINS LLP
Matthew Rawlinson (SBN 231890)
Daniel R. Gherardi (SBN 317771)
140 Scott Drive
Menlo Park, California 94025
Telephone: +1.650.328.4600
Facsimile: +1.650.463.2600
matt.rawlinson@lw.com
daniel.gherardi@lw.com

Michele D. Johnson (SBN 198298)
650 Town Center Drive, 20th Floor
Costa Mesa, California 92626
Telephone: +1.714.540.1235
Facsimile: +1.714.755.8290
michele.johnson@lw.com

Colleen C. Smith (SBN 231216)
12670 High Bluff Drive
San Diego, California 92130
Telephone: +1.858.523.5400
Facsimile: +1.858.523.5450
colleen.smith@lw.com

Gavin M. Masuda (SBN 260480)
505 Montgomery Street, Suite 2000
San Francisco, California 94111
Telephone: +1.415.391.0600
Facsimile: +1.415.395.8095
gavin.masuda@lw.com

Attorneys for Defendants

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE ENPHASE ENERGY, INC. DERIVATIVE
LITIGATION

LEAD CASE NO. 3:20-cv-04623-BLF

**JOINT NOTICE OF RELATED CASE
AND STIPULATION AND
[PROPOSED] ORDER ON
CONSOLIDATION**

1 **WHEREAS**, on December 9, 2020, Plaintiff Frank Caggiano (“Plaintiff Caggiano”) filed
 2 a verified stockholder derivative complaint purportedly on behalf of Enphase Energy, Inc.
 3 (“Enphase”) against Badrinarayanan Kothandaraman, Eric Branderiz, Mandy Yang, Steven J.
 4 Gomo, Benjamin Kortlang, Richard Mora, and Thurman J. Rodgers (collectively, the “Individual
 5 Defendants”, and with Enphase, “Defendants”), captioned *Caggiano v. Kothandaraman, et al.*,
 6 Case No. 3:20-cv-08715-JSC (the “Caggiano Action”);

7 **WHEREAS**, the allegations in the Caggiano Action are substantially similar to the
 8 allegations raised in a securities class action captioned *Hurst v. Enphase Energy, Inc.*, Case No.
 9 5:20-cv-04036-BLF (the “Hurst Action”), the allegations raised in two previously filed verified
 10 derivative actions, which, on November 20, 2020, the Court consolidated and appointed co-
 11 counsel (the “Consolidated Action”) (Dkt. No. 31) (the “Order”), as well as allegations raised in
 12 a third previously filed verified derivative action, *Buch v. Kothandaraman, et al.*, Case No. 3:20-
 13 cv-8131, which, on December 2, 2020, the Court consolidated with the Consolidated Action
 14 (Dkt. No. 32);

15 **WHEREAS**, pursuant to Paragraph 9 of the Court’s Order, Defendants and Plaintiff
 16 Caggiano, respectfully submit this Joint Notice of Related Case and Stipulation on Consolidation
 17 and contend that the Caggiano Action should be related to and formally consolidated into the
 18 Consolidated Action;

19 **WHEREAS**, pursuant to paragraph 10 of the Court’s Order, Defendants and Plaintiff
 20 Caggiano agree that the terms of the order entered in *Shen v. Kothandaraman, et al.*, Case No.
 21 3:20-cv-04623 (the “Shen Action”), on September 24, 2020 staying the Shen Action pending
 22 resolution of the motion to dismiss in the related Hurst Action, shall also apply to the Caggiano
 23 Action. For the avoidance of doubt, Defendants shall not be required, during the pendency of the
 24 stay, to respond to any complaint or amended complaint filed in the Consolidated Action, the
 25 Caggiano Action, or any action later consolidated into the Consolidated Action;

26 **WHEREAS**, Defendants hereby accept service of the complaint filed in the Caggiano
 27 Action, provided, however, that the acceptance of service shall not waive any rights, claims and
 28 defenses other than a defense as to the sufficiency of service;

WHEREAS, this Joint Notice and Stipulation is without prejudice to any and all other defenses Defendants may assert in this or any of the above-referenced actions, including, but not limited to, jurisdictional defenses such as *forum non conveniens* and improper venue, or any other procedural or substantive challenge to the Consolidated Action, and without prejudice to any and all claims Plaintiff Caggiano may assert.

IT IS ACCORDINGLY STIPULATED, by and between the undersigned counsel for Defendants and Plaintiff Caggiano, and subject to approval by the Court, that:

1. The stay of proceedings ordered in the Consolidated Action is temporarily lifted for the sole and limited purpose of the filing of, and ruling on, this stipulation and [proposed] order.

2. The Caggiano Action is hereby consolidated into the Consolidated Action for all purposes, including pre-trial proceedings and trial, pursuant to Federal Rule of Civil Procedure 42(a).

3. All other terms of the Order in the Consolidated Action, Dkt. No. 31, shall continue to apply to the Consolidated Action now including the Caggiano Action.

Dated: December 23, 2020

LATHAM & WATKINS LLP

By /s/ Colleen C. Smith
Colleen C. Smith

Attorneys for Defendants

Dated: December 23, 2020

LEVI & KORSINSKY, LLP

By /s/ Rosanne L. Mah
Rosanne L. Mah (SBN 242628)
388 Market Street, Suite 1300
San Francisco, California 94111
Telephone: (415) 373-1671
Facsimile: (415) 484-1294
Email: rmah@zlk.com

Gregory M. Nespole (*pro hac vice*
forthcoming)
55 Broadway, 10th Floor
New York, New York 10006
Telephone: (212) 363-7500
Facsimile: (212) 363-7171
Email: gnespole@zlk.com

Attorneys for Plaintiff CAGGIANO

Pursuant to Civil L.R. 5-1(i)(3), all signatories concur in filing this Joint Notice and
Stipulation.

/s/ Colleen C. Smith
Colleen C. Smith

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

The Hon. Beth Labson Freeman
United States District Judge